IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. CRIMINAL JAIL APPEAL NO.830/2003

Toofan Singh S/o Udai Singh
...Accused-Appellant
Versus
The State of Rajasthan through P.P.
...Respondent

Date of Judgment ::: 1st March, 2007

PRESENT
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Shri M.P. Khandelwal, Amicus Curiae, for the Accused-Appellant
Shri Arun Sharma, P.P., for the State

By the Court:-

Accused Toofan Singh S/o Udai Singh has preferred this appeal through the Superintendent, Central Jail, Kota, challenging his conviction and sentence passed by the Special Judge (N.D.P.S. Cases), Jhalawar, vide judgment and order dated 5.6.2002, in Sessions Case No.8/99, whereby he was convicted under Section 8/19 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (For short, 'the NDPS Act') to ten years rigorous imprisonment and a fine of Rs.1,00,000/- and under Section 8/28 of the NDPS Act to ten years rigorous imprisonment and a fine of

Rs.1,00,000/-; in default of payment of fine, to further undergo three years additional rigorous imprisonment, in each offence. Both the sentences to run concurrently.

Briefly stated the facts of the case are that on 6.4.1999 accused Toofan Singh himself lodged a report that he is a licence-holder-agriculturist to cultivate the opium; and when he was sleeping in his house, his opium weighing 10 kilogram and 800 gram, which was kept by him underneath has been stolen/theft by thieves. On this report, Case No.54/99 was registered at the Police Station Dug, District Jhalawar, under Sections 457 and 380, IPC. During investigation, the accused was also interrogated and the accused himself stated during interrogation that he got 7 kg. opium hidden as he wanted to sell the same on higher price and the same is lying in the 'Bada' (Courtyard) of Nainsingh. The information given by the accused was reduced in writing and in pursuance thereof, the opium weighing 8 kilogram and 300 gram was recovered. Thereafter the offence of Sections 19, 26 and 28 of the NDPS Act was also added and accused was arrested. After completion of investigation, a charge-sheet was filed against the accused for the offence under Section 8 read with Sections 19, 26 and

28 of the NDPS Act. The trial court framed charge for the above offences, which was denied and trial was claimed.

After completion of prosecution evidence, the statement of accused was recorded under Section 313, Cr.P.C., wherein he stated that he has falsely been implicated by the police, but no other evidence was produced.

The learned trial court, after considering the evidence on the record and submissions of learned counsel for both the parties, convicted and sentenced the accused-appellant, as mentioned above.

The learned counsel for the accused-appellant contended that there is violation of Sections 42 and 50 of the NDPS Act, in the present case. It is further contended that the recovery of contraband was made when accused was in the custody, therefore, the same is not admissible in evidence and accused is liable to be acquitted.

The learned Public Prosecutor, on the other hand, supported the judgment passed by the learned trial court and contended that there is no illegality in the judgment and the appeal of the accused is liable to be dismissed.

I have considered the submissions of the

learned counsel for both the parties and examined the impugned judgment as well as the record of the trial court.

Exhibit P-14, FIR No.54/99, was registered at Police Station Dug, District Jhalawar, under Sections 457 and 380, IPC, on the basis of the report of accused Toofan Singh about theft of his opium weighing 10 kilogram and 800 gram. The interrogation-note was prepared and, according to which, it is clear that during investigation of the case the accused was interrogated and he admitted that he himself hidden the opium in the 'Bada' of Nainsingh and the same has not been taken away by any person. Exhibit P-11 is the written-application given by the accused to Station House Officer, Police Station Dug, which has been proved by PW-9 Tejraj Singh. Thereafter an information under Section 27 of the Evidence Act was recorded vide Exhibit P-12, and in pursuance thereof, recovery of opium weighing 8 kilogram and 300 gram was made, which was seized and the memo was prepared. The sample was also sealed and the same was kept in 'maalkhana' and it was sent for analysis to the Forensic Science Laboratory (for short, 'FSL'). A report of FSL (Exhibit P-17) was received, wherein it was mentioned that on chemical examination, the sample contained in

the Packet marked A1 gave positive tests for the presence of chief constituents of coagulated juice of opium poppy having 6.46% morphine. The interrogation-note is Exhibit P-13.

The trial court considered the prosecution evidence in detail and recorded a finding that the report under Sections 457 and 380, IPC, lodged by the accused, was found false during investigation and the purpose of lodging false report on behalf of the accused was to embezzle the opium. The charge against the accused has been proved by the statements of PW-1 Jagdish Ram, PW-2 Trilok Chand, PW-3 Yaqub Khan, PW-6 Yashwant Kumar and PW-9 Tejraj Singh.

So far as PW-4 Ayyub Khan and PW-5 Nainsingh are concerned, they were declared hostile. PW-8 Ramkanwar Bai is the wife of accused Toofan Singh. PW-9 Tejraj Singh has given his detailed statement before the trial court and he was also cross-examined by the learned counsel for the accused in detail.

The trial court has held that it is not a case of personal search, therefore, Section 50 of the NDPS Act is not applicable. The trial Court further held that looking to the circumstances wherein interrogation of the accused, information of the accused and recovery of contraband were made, Section

42 of the NDPS Act was not required to be complied with. The information given under Section 27 of the Evidence Act and the recovery of article made in pursuance thereof were admissible in evidence in view of the judgment of the Hon'ble Supreme Court, as referred in the impugned judgment, reported in 1997 (1) Supreme 405 - State of Rajasthan Vs. Bhoop Ram.

It is relevant to mention that the accused was put certain questions during his statement before the trial court under Section 313, Cr.P.C., but he did not give any explanation in respect of Exhibit P-11 and Exhibit P-12. The recovery of contraband belonging to accused is fully proved in the case and I fully agree with the reasons given by the learned trial court for passing an order of conviction against the accused-appellant.

Consequently I do not find any merit in this appeal and the same is accordingly dismissed.

(Narendra Kumar Jain) J.

//Jaiman//